

Understanding the options available as an employer

The increase in Coronavirus cases is headline news around the world, and there are genuine concerns around how to deal with its impact on UK workplaces.

Guidance has been provided below regarding the different options that need to be considered for all businesses in the case that they need to temporarily shut down.

If you are unable to carry on paying your employees at their current rate of pay and they do not qualify for sick pay, then the options to consider are:

- Short-time working
- Lay-offs
- Furloughing
- Redundancies
- Winging it!

Short-time working

During a downturn in business, employers may choose to make other changes to the employment contract rather than declare redundancies. One option they may have to consider is short-time working. This is when an employee's hours of work are reduced and their pay is reduced accordingly.

If there is no contractual right to impose short-time working, the employer should present its proposal to the relevant employees (or their representatives) explaining why it considers that short-time working is necessary. This will be with a view to seeking their consent.

If it can clearly be shown that the reduction is to reduce or avoid redundancies, employees are likely to be more amenable to short-time working.

Imposing short-time working can give employees the right to claim a redundancy payment although the legal provisions governing this are complex. For these specific purposes, a week of short time will only count where the amount of work provided is less than 50% of normal hours.

Lay-off

A company can ask employees to stay at home or take unpaid leave if there's not enough work for them. A lay-off is if an employee is off work for at least one working day. Short-time working is when working hours are cut.

How Long Can an Employee be Laid Off?

There's no limit for how long an employee can be laid off or put on short-time working but employees can resign and claim redundancy pay if it's been:

- 4 or more weeks in a row; OR
- 6 or more weeks in a 13-week period

Lay-off Pay Entitlement & Short-Time Working Payments

If employees are unpaid, they're usually entitled to Statutory Guarantee Pay (SGP). The maximum an employee can receive is £29 a day for 5 days in any 3-month period. A maximum of £145.

If an employee earns less than £29 a day they will receive their normal daily rate. If an employee works part-time, their entitlement is worked out proportionally.

Furloughing

Furlough leave has been introduced by the government during the coronavirus pandemic to mean leave offered which keeps employees on the payroll without them working. As the furloughed staff are kept on the payroll, this is different to being laid off without pay or being made redundant.

Coronavirus Job Retention Scheme

Employers will be able to access the scheme through an online portal. The employer provides details of the affected furloughed employees online and submits information to HMRC about their earnings and any other information required.

If as an employer you decide to access the Coronavirus Job Retention Scheme, you would need to discuss this with your employees, as they would have to be classified as a furloughed worker.

To qualify for this scheme, the employee should not undertake work for the employer, whilst you classify them as being furloughed. This allows the employer to claim a grant of up to 80% of the wage of the employee, up to a cap of £2,500 per month.

The employee will remain employed during the period that they are classed as furloughed. For employers who have furloughed employees you can choose whether to:

- Only make the salary payment reimbursed by the government.
- Pay all the difference between the grant and the employee's normal salary.
- Pay part of the difference between the grant and the employee's normal salary.

If an employee's salary is reduced as a result of these changes, then they may be eligible for support through the welfare system, including Universal Credit.

The Coronavirus Job Retention Scheme will run for at least 3 months from the 1st March 2020 and will be reviewed and extended if necessary.

As with any changes to an employee's terms and conditions of employment, there would have to be a variation to contract letter which would transfer the employee into a furloughed role.

We are waiting to hear further information regarding the wage costs, which are not yet clear. The Government website states that "HMRC will reimburse 80% of furloughed workers wage costs", if that is the case, then NI and pension contributions should be considered as "costs".

As the claim is made in arrears, this could cause businesses cash flow problems and it may be that the business interruption loan scheme can bridge the gap between wages being paid and HMRC refunding your costs.

NB - If an employee does not agree to be furloughed, the employer can dismiss by reason of redundancy.

Redundancies

Employers need to consider all options available to help manage workforce costs and avoid redundancies wherever possible but we are also dealing with a country close to lockdown for an unknown amount of time so they may become necessary for survival long term.

Redundancy is a special form of dismissal which happens in three situations:

- When an employer has a reduction in the need for employees to carry out work of a particular kind,
- The employer intends to cease, continuing the business at a particular workplace
- Or the actual or intended closure of the whole business, as may occur in the coronavirus (COVID-19) situation.

Employers will have to follow a correct fair procedure as outlined in their own terms and conditions of employment and following the stages include making a statutory redundancy payment, and a notice period payment.

Employers who feel that the coronavirus makes redundancies inevitable may already have started the planning stage including consultation and consideration of alternatives. The following stages are usually then involved:

- Identifying the pool for selection
- Seeking volunteers
- Consulting employees individually and collectively
- Information to provide to the representatives regarding selection
- Individual meetings
- Confirming redundancies
- Redundancy payment
- Appeals
- Counselling and support.

If you do not consult employees in a redundancy situation, any redundancies you make will almost certainly be unfair and you could be taken to an employment tribunal.

Avoiding redundancies

- The steps employers can take to avoid compulsory redundancies include seeking applicants for voluntary redundancy or early retirement, encouraging existing staff to work flexibly or reduced hours by agreement, freezing or restricting recruitment, reducing or banning overtime, reallocation existing employees to any parts of the business which are less affected by the virus.
- Other possible steps include short-time working or lay-offs (see above), reduction in use of self-employed contractors, freelancers and casual workers.
- It may also be possible to offer early retirement to volunteers (subject to complying with age discrimination provisions)

It is a difficult time to take sabbaticals and secondments but those and any form of unpaid leave could be an alternative.

Giving notice

You must give staff notice and agree a leaving date once you've finished the redundancy consultations. You would need to give staff at least the statutory notice period, based on how long they have worked.

Length of service

Notice you must give

1 month to 2 years	At least a week
2 years to 12 years	A week's notice for every year employed
12 or more years	12 weeks

You can allow staff to leave earlier than the planned leaving date (for example without notice) by offering payment in lieu of notice.

Notice pay

You must give staff notice pay - based on their pay rate and notice period - or make a payment in lieu of notice.

Pay in lieu of notice

If you have included a payment in lieu of notice clause in the employment contract, you can end your staff's employment with no notice. This lets you make a payment to cover the notice period they would have worked.

These payments must have tax and National Insurance deducted.

When you make payments in lieu of notice, you still have to pay staff the basic pay they would have got during the notice period. You also have to pay pension, private health care insurance or other contributions if it's in the employee's contract.

Redundancy pay

Employees you make redundant might be entitled to redundancy pay - this is called a 'statutory redundancy payment'. To be eligible, an individual must:

- be an employee working under a contract of employment
- have at least 2 years' continuous service
- have been dismissed, laid off or put on short-time working - those who opted for early retirement do not qualify

You must make the payment when you dismiss the employee, or soon after. A redundant employee also has the right to a written statement setting out the amount of redundancy payment and how you worked it out.

Statutory redundancy pay rates

These are based on an employee's age and length of employment and are counted back from the date of dismissal. Employees get:

- 1.5 weeks' pay for each full year of employment after their 41st birthday
- a week's pay for each full year of employment after their 22nd birthday
- half a week's pay for each full year of employment up to their 22nd birthday

Length of service is capped at 20 years and weekly pay is capped at £525. The maximum amount of statutory redundancy pay is £15,750.

You can give your staff extra redundancy pay if you want to or have a qualifying period of less than 2 years.

Winging it!

When faced with a situation like this, although the support being announced is impressive, for some businesses it simply won't be able to be implemented in time and business owners have been taking matters into their own hands by talking to staff about their version of all the above options.

We'd like to hope most people are reasonable people, appreciating honest and open discussion and understand the position the business is currently in. However, this maybe the case now BUT it might lead to employment tribunals down the road. We'd always recommend getting their agreement in writing.

Making a decision!

This is a very difficult time for all employers as you want to make sure you make the right decision for your employees and your business.

Many businesses will have employee groups, such as admin, sales, operations that each of the actions required are different per category.

You may also feel a bit lost as to how to calculate the cashflow implications on the business for each of these decisions. This is where we are here to support you. We recommend that you discuss these options with your principal adviser to make sure you are considering all the options and possible implications before you take action.